

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

<b>IN THE MATTER OF:</b>  <b>Cory Leick</b>  <b>Mills, Iowa</b>  <b>NPDES Permit No. 21886-21647</b> <b>General Permit No. 2</b>	<b>ADMINISTRATIVE CONSENT ORDER NO. 2016-WW- 24</b>
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**TO: Cory Leick**  
**22027 221<sup>st</sup>**  
**Glenwood IA, 51534**

**I. SUMMARY**

This administrative consent order (order) is entered into between Cory Leick and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of Mr. Leick's National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 and his failure to obtain all required permits. Mr. Leick agrees to pay an administrative penalty of \$6,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this order.

Any questions or responses regarding this order should be directed to:

**Relating to technical requirements:**

Alison Manz, Environmental Specialist  
IDNR Field Office No. 4  
1401 Sunnyside Lane  
Atlantic, IA 50022  
Phone: 712-243-1934

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Phone: 515-725-8244

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. On May 23, 2013, Mr. Leick received a Notice of General Permit Coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity. This permit was for the property referred to as Brothers Avenue, which is located in the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 12 T73N R43W in Mills County, Iowa (hereafter referred to as Site 1).

2. On April 15, 2015, the Department received a complaint alleging that a borrow site operated by Mr. Leick, located in the NW  $\frac{1}{4}$  Section 12, Oak Township (Site 1), did not have erosion controls in place and sediment was observed entering the creek. The complainant also alleged sediment was blowing off the site when it was windy.

3. On April 17, 2015, Alison Manz an Environmental Specialist with the Department, went to the site to investigate. Once on site, she observed a significant amount of bare ground, a lack of sediment controls and a discharge of sediment to an unnamed tributary of Keg Creek (unnamed tributary 1). Ms. Manz documented these observations via photographs.

4. On April 29, 2015, Ms. Manz met with Mr. Leick on-site to review his Storm Water Pollution Prevention Plan (SWPPP). During this meeting Mr. Leick discussed another potential borrow site located approximately  $\frac{1}{2}$  mile to the southeast (hereafter referred to as Site 2) of Site 1. Ms. Manz advised Mr. Leick to comply with the Iowa laws that regulate storm water, specifically Iowa Administrative Code chapter 567-64.

5. On May 7, 2015, the Department sent Mr. Leick a Notice of Violation (NOV) for the violations documented by Ms. Manz in April. This NOV referenced the relevant law and included a copy of the inspection report. This inspection report explained the violations documented by Ms. Manz in detail. Briefly, those violations are as follows:

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(1) failure to conduct inspections within 24 hours of rain events which are a .5 inch or greater;

(2) failure to include updated maps with records that document changes in design, construction, operation or maintenance;

(3) sediment was observed leaving the property;

(4) silt fences were removed prior to stabilization of the site;

(5) sediment basins were full of sediment and showed signs that they had overflowed;

(6) channelization through berms was observed allowing sediment to flow thru them and discharge to an unnamed tributary; and

(7) distinct loess soil was observed in unnamed tributary 1 at various locations.

6. On February 25, 2016, Ms. Manz conducted a follow-up investigation of Site 1. Once on-site she observed the following violations:

(1) sediment had entered unnamed tributary 1;

(2) sufficient sediment controls were not present; and

(3) a large gully had formed on-site which drained directly to unnamed tributary 1.

7. On March 7, 2016, Mr. Leick called the Department and stated that the sediment basins had been repaired, topsoil work would be completed that week and the area would be farmed in the spring.

8. On March 16, 2016, the Department sent Mr. Leick a NOV for the above discussed violations.

9. On March 17, 2016, Ms. Manz conducted an on-site investigation of Site 2. During this investigation Ms. Manz documented that Mr. Leick had engaged in construction activities on a site which was approximately 7 acres in size. She observed the disturbance of soil and the presence of sediment in a drainage ditch. This drainage ditch drained to an unnamed tributary of Keg Creek (hereafter unnamed tributary 2). Ms. Manz documented sediment leaving the site and entering a roadside ditch north of County Highway H12. These violations were documented via photographs. Upon returning to her office, Ms. Manz discovered that the site was not covered by Mr. Leick's NPDES permit; and it was not covered by another NPDES permit.

10. On March 18, 2016, the Department sent Mr. Leick a NOV for the above discussed violations. This NOV referenced the relevant law and included copies of the photographs taken by Ms. Manz.

11. On March 22, 2016, Mr. Leick called Ms. Manz and stated that all controls at Site 1 were completed and the area was ready to be farmed. He also stated that he did not think that Site 2 needed a NPDES permit.

**IV. CONCLUSIONS OF LAW**

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The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into a water of the state, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. The above stated facts demonstrate non-compliance with this provision.
2. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.
3. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring a NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary.
4. General Permit No.2, Part IV, provides that the permittee must develop and implement a SWPPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the SWPPP. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days.

Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. A copy of the plan is required to be furnished to the Department upon request. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept within a reasonable time.

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The above stated facts demonstrate non-compliance with this provision.

5. Department subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. This would include Mr. Leick's operating under the authority of NPDES General Permit No. 2. Failure to comply with General Permit No. 2 is a violation of subrule 64.3(1). Moreover, Mr. Leick failed to obtain a permit for Site 2. The above stated facts demonstrate non-compliance with this provision.

6. 567 IAC 61.3(2) "b", "c" and "e" state that "[s]uch waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance." The above stated facts demonstrate non-compliance with this provision.

**V. ORDER**

THEREFORE, the Department orders, and Mr. Leick consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of NPDES General Permit No. 2 for Site 1;
3. Within 30 days receive Notice of General Permit Coverage under NPDES General Permit No. 2 for storm water discharge associated with construction activity at Site 2;
4. Obtain all NPDES permits required by the Department prior to engaging in construction activities; and
4. Pay an administrative penalty of \$6,000.00 within 30 days of the date the Director signs this order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and

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efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** Mr. Leick failed to install and maintain adequate storm water runoff control measures throughout the construction site of both Sites 1 and 2. Further, he also failed to obtain a NPDES permit for Site 2. This avoided several thousand dollars in materials and labor expenses since the ground breaking. For these reasons, the amount of \$1,000.00 is assessed for this factor.

b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute.

Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Therefore, the amount of \$2,000.00 is assessed for this factor.

c. **Culpability.** Mr. Leick is engaged in the business of construction and property development. As a person engaged in this business, Mr. Leick has an obligation to be aware of the applicable regulations and comply with those regulations. Moreover, as a NPDES permit holder Mr. Leick has an obligation to be aware and fulfill the requirements associated with that permit. In addition, the Department informed Mr. Leick of the legal requirements and the specific deficiencies documented at Sites 1 and 2 on numerous occasions. Therefore, the amount of \$3,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Mr. Leick. By signature to this order, all rights to appeal this order are waived by Mr. Leick.

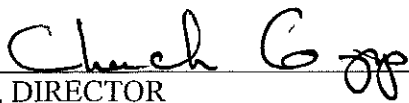
**VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

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Dated this 2<sup>nd</sup> day of  
December, 2016

  
Chuck Gipp, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 12<sup>th</sup> day of  
December, 2016

Cory Leick NPDES Permit No. **21886-21647** (Copy of Order to Central Office Records File),  
Alison Manz- FO 4, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.